

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CASE NO. 04-35148 DDO

Kevin Michael Sullivan
SSN XXX-XX-8986
Annette Kay Sullivan
SSN XXX-XX-5453

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

TO: Debtor and other entities specified in Local Rule 3015-3.

1. Bank of America, N.A. (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on November 9, 2004, before the Honorable Dennis D. O'Brien in Courtroom 228A at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on November 8, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than November 6, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed September 2, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$96,356 .00, as evidenced by that certain Promissory Note dated November 24, 1993, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated November 24, 1993, executed by Kevin Sullivan and Annette Sullivan, husband and wife, recorded December 21, 1993, as Document No. 775814, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in their pre-petition monthly mortgage payments to Secured Creditor for the months of April, 2004 through September, 2004, in the total amount of \$6,798.74, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 27 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. Said plan is also objected to on the basis that the plan, as proposed by Debtor, does not provide for interest on the arrears as allowed by 11 U.S.C. § 1322(e).

11. The value of the property as scheduled by Debtor is \$205,000.00 subject to Secured Creditor's mortgage in excess of \$88,513.77. The property is also subject to a second mortgage in favor

of Fairbanks Capital Corp in excess of \$63,959.95 as scheduled by Debtor.

12. The plan, as proposed, is not made in good faith by Debtor.
13. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 13th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Multistate

I hereby certify that this is a true and correct copy of the original document.

Signature: *[Signature]*

NOTE

5181037

0009695313

FHA Case No.

271 6877354 703

NOVEMBER 24, 1993

[Date]

7416 COLUMBIA COURT, WOODBURY, MN 55125

[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means

UNITED MORTGAGE CORPORATION

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of

NINETY SIX THOUSAND, THREE HUNDRED FIFTY SIX AND NO /100-----

Dollars (U.S.\$ 96,356.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of SEVEN per cent (7.000 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." That Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on JANUARY 1, 1994. Any principal and interest remaining on the first day of DECEMBER, 2023, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at 8300 NORMAN CENTER DRIVE, SUITE 1000 BLOOMINGTON, MINNESOTA 55437 or at such other place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of \$ 841.06. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month.

EXHIBIT *[Signature]*

OFFICE OF
COUNTY RECORDER
WASHINGTON COUNTY
MINN.

Dec 21 1 32 PM '99

DOC. 775814
JUDY CAMERON
COUNTY RECORDER
BY /s/ Judy Cameron

6181097

State of Minnesota

MORTGAGE

FHA Case No.

271 6877384 703

THIS MORTGAGE ("Security Instrument") is given on **NOVEMBER 24, 1993**. The Mortgagor is

KEVIN SULLIVAN and ANNETTE SULLIVAN, Husband and Wife

7416 COLUMBIA COURT, WOODBURY, MN 55125

("Borrower"). This Security Instrument is given to

UNITED MORTGAGE CORPORATION

which is organized and existing under the laws of the State of Minnesota, and whose address is **8300 NORMAN CENTER DRIVE, SUITE 1000 BLOOMINGTON, MN 55437**

("Lender"). Borrower owes Lender the principal sum of

NINETY SIX THOUSAND, THREE HUNDRED FIFTY SIX AND NO /100-----

Dollars (U.S. \$ **96,356.00**). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **DECEMBER 1, 2023** and for interest at the yearly rate of **SEVEN** percent.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 6 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in

WASHINGTON County, Minnesota:

LOT 8, BLOCK 2, RIDGEGATE SECOND ADDITION, WASHINGTON COUNTY, MINNESOTA.

07-Dec-99 WASHINGTON COUNTY No. 19211
Registration tax hereon of \$221.72 Paid
MN Conservation Fund N.S. 475H \$5.00 Paid
R.N. STAFFORD, Auditor-Treasurer by DW SIMONET

which has the address of **7416 COLUMBIA COURT, WOODBURY Minnesota 55125**

[Zip Code] ("Property Address")

[Street, City],

FHA Minnesota Mortgage - 4/92

4R(MN) (9113)

VMP MORTGAGE FORMS * (313)233-8100 * (800)21-1291

Page 1 of 8

Initials: _____

UNIVERSAL TITLE
1961 South Greeley Street
Stillwater, MN 55082

A2216744



EXHIBIT B

21. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

☐ Condominium Rider ☐ Graduated Payment Rider ☐ Other [Specify]
☐ Planned Unit Development Rider ☐ Growing Equity Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Kevin Sullivan (Seal)
 KEVIN SULLIVAN -Borrower

Annette Sullivan (Seal)
 ANNETTE SULLIVAN -Borrower

(Seal)
 -Borrower

(Seal)
 -Borrower

STATE OF MINNESOTA,

Washington

County ss:

On this 24TH day of NOVEMBER, 1993, before me appeared

KEVIN SULLIVAN and ANNETTE SULLIVAN, Husband and Wife

, to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

My Commission Expires



SALLY J. PITMAN
 NOTARY PUBLIC - MINNESOTA
 RAMSEY COUNTY
 My commission expires 8-4-98

Sally J. Pitman
 Notary Public

This instrument was prepared by UNITED MORTGAGE CORPORATION, 8300 NORMAN CENTER DR #1000, of BLOOMINGTON, Minnesota 55437

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Kevin Michael Sullivan
SSN XXX-XX-8986
Annette Kay Sullivan
SSN XXX-XX-5453

CASE NO. 04-35148 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 13, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Kevin M. Sullivan
Annette K. Sullivan
7416 Columbia Ct
Woodbury, MN 55125

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Urosh Piletich
1675 S Greeley St Ste 203
Stillwater, MN 55082

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 13th day of October, 2004.

/s/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Kevin Michael Sullivan
SSN XXX-XX-8986
Annette Kay Sullivan
SSN XXX-XX-5453

Debtor.

CASE NO. 04-35148 DDO

This Chapter 13 Case came on before the Court on November 9, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed September 2, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court